

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 18-143

ASSORTED DRUG PARAPHERNALIA
VALUED AT \$29,627.07,

Defendants-in-rem.

VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

Plaintiff, United States of America, brings this complaint in accordance with Supplemental Rule G(2) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action to forfeit to the United States of America items that constitutes drug paraphernalia, as that term is defined in 21 U.S.C. § 863(d), that are subject to forfeiture pursuant to 21 U.S.C. § 881(a)(10).

DEFENDANTS-*IN-REM*

2. Defendants-*in-rem* consist of the following Assorted Drug Paraphernalia valued at approximately \$29,627.07:

- a. Approximately 72 assorted bongs;
- b. Approximately 561 assorted pipes;
- c. Approximately 70 assorted marijuana grinders;
- d. Approximately 60 assorted urine cleansers;
- e. Approximately 10 assorted roach clips;

- f. Approximately 39 assorted scales;
- g. Approximately 9 assorted glass items;
- h. Approximately 4 assorted smoking masks;
- i. Approximately 11 assorted clear glass items; and
- j. Approximately 132 assorted stash containers;

(hereinafter referred to as “Defendant Drug Paraphernalia”).

3. Defendant Drug Paraphernalia was seized by the United States Drug Enforcement Administration on September 12, 2017 in the District of New Mexico.

4. Defendant Drug Paraphernalia is now, and during the pendency of this action will be, in the jurisdiction of this Court.

JURISDICTION AND VENUE

5. The United States District Court for the District of New Mexico has subject matter jurisdiction under 28 U.S.C. §§ 1345, 1355(a), and 1356.

6. Venue for this civil forfeiture action is proper in this district pursuant to 28 U.S.C. §§ 1335 and 1395, as acts or omissions giving rise to the forfeiture took place in this district and Defendant Drug Paraphernalia is found in this district.

7. Upon the filing of this complaint, Defendant Drug Paraphernalia will be arrested by execution of a Warrant for Arrest *In Rem* in the District of New Mexico.

FACTS

8. Phat Glass is located at 1211 East Idaho Avenue, Las Cruces, New Mexico.

9. Jason Fernandez is the owner and operator of Phat Glass.

10. On November 18, 2016, two undercover agents entered Phat Glass and purchased two glass pipes.

11. The glass pipes purchased by undercover agents on November 18, 2016 are designed for and primarily intended for use in smoking marijuana.

12. The glass pipes purchased by undercover agents on November 18, 2016 are not traditionally used with tobacco products.

13. On August 30, 2017, two undercover agents entered Phat Glass to determine if drug paraphernalia was still being offered for sale at Phat Glass.

14. On August 30, 2017, undercover agents observed glass pipes and bongs that were displayed for sale at Phat Glass.

15. On August 30, 2017, undercover agents also observed that glass pipes were manufactured for sale at Phat Glass.

16. On September 8, 2017, United States Magistrate Judge Carmen E. Garza approved a federal search and seizure warrant authorizing the search of Phat Glass and the seizure of drug paraphernalia.

17. On September 12, 2017, federal agents from the United States Drug Enforcement Administration executed the federal search and seizure warrant at Phat Glass.

18. On September 12, 2017, Defendant Drug Paraphernalia was seized at Phat Glass.

19. Each item that is included in Defendant Drug Paraphernalia is primarily intended for use or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under Title 21 of the United States Code.

20. Each item that is included in Defendant Drug Paraphernalia is not traditionally intended for use with tobacco products.

21. On September 12, 2017, federal agents took photographs and video footage of the premises at Phat Glass prior to searching and seizing Defendant Drug Paraphernalia.

22. On September 12, 2017, one of the “Shop Policies” that was displayed at Phat Glass stated: “You cannot talk about illegal stuff! If you do we will kick your ass out!”

23. On September 12, 2017, assorted glass smoking pipes were displayed for sale at Phat Glass.

24. On September 12, 2017, bongs were displayed for sale at Phat Glass.

25. On September 12, 2017, marijuana grinders were displayed for sale at Phat Glass.

26. On September 12, 2017, roach clips were displayed for sale at Phat Glass.

27. On September 12, 2017, stash containers were displayed for sale at Phat Glass.

28. On September 12, 2017, detoxifiers were displayed for sale at Phat Glass.

29. On September 12, 2017, a number of t-shirts with depictions of marijuana leaves were displayed for sale at Phat Glass.

30. On September 12, 2017, stickers with depictions of marijuana leaves were displayed for sale at Phat Glass.

31. Prior to September 12, 2017, Phat Glass advertised its merchandise as including a large selection of custom glass pipes.

32. Prior to September 12, 2017, Jason Fernandez advertised Phat Glass as “New Mexico’s Only Smoke Shop endorsed by Tommy Chong!”

33. Tommy Chong is a popular culture icon who is widely associated with marijuana.

CLAIM FOR RELIEF

34. The United States incorporates by reference the allegations in paragraphs 1 through 33 as though fully set forth.

35. Pursuant to 21 U.S.C. § 881(a)(10), any drug paraphernalia is subject to forfeiture to the United States.

36. Pursuant to 21 U.S.C. § 881(a)(10), no property right may exist in drug paraphernalia.

37. The term “drug paraphernalia” is defined in 21 U.S.C. § 863(d).

38. The term “drug paraphernalia” means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, such as—

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

- (10) air-driven pipes;
- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers;
- (14) wired cigarette papers; or
- (15) cocaine freebase kits.

39. Defendant Drug Paraphernalia is drug paraphernalia, as that term is defined in 21 U.S.C. § 863(d), and it is thus subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(10).

WHEREFORE: Plaintiff seeks arrest of Defendant Drug Paraphernalia and forfeiture of same to Plaintiff, determination of the validity and priority of claims of the Claimants and any Unknown Claimants to Defendant Drug Paraphernalia, costs and expenses of seizure and of this proceeding, and other proper relief.

Respectfully submitted,

JAMES D. TIERNEY
Acting United States Attorney



BROCK TAYLOR
Assistant U.S. Attorney
200 N. Church Street
Las Cruces, NM 88001
(575) 522-2304

28 U.S.C. § 1746 DECLARATION

I am a Special Agent with the Drug Enforcement Administration. I have read the contents of the Complaint for Forfeiture *In Rem* to which this Declaration is attached. The statements contained in the complaint are true to the best of my knowledge and belief.

I declare under penalty of perjury and the laws of the United States of America that this Declaration is true and correct, except as to matters stated on information and belief, and as to those matters I believe them to be true.

Dated: 2/12/18



Amber N. Westfall, Special Agent
Drug Enforcement Administration

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS United States of America	DEFENDANTS Assorted Drug Paraphernalia Valued at \$29,627.07
(b) County of Residence of First Listed Plaintiff _____ <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>	
(c) Attorneys (Firm Name, Address, and Telephone Number) Brock E. Taylor Assistant United States Attorney 200 N. Church Street, Las Cruces, NM 88001	
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	
<input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <small>(For Diversity Cases Only)</small>	
Citizen of This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF <input checked="" type="checkbox"/> Citizen of This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF Incorporated or Principal Place of Business In This State	
Citizen of Another State <input type="checkbox"/> PTF <input type="checkbox"/> DEF <input type="checkbox"/> Citizen of Another State <input type="checkbox"/> PTF <input type="checkbox"/> DEF Incorporated and Principal Place of Business In Another State	
Citizen or Subject of a Foreign Country <input type="checkbox"/> PTF <input type="checkbox"/> DEF <input type="checkbox"/> Citizen or Subject of a Foreign Country <input type="checkbox"/> PTF <input type="checkbox"/> DEF Foreign Nation	

IV. NATURE OF SUIT (Place an "X" in One Box Only)																														
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V. ORIGIN (Place an "X" in One Box Only)					
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify) _____ <input type="checkbox"/> 6 Multidistrict Litigation					

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 21 USC 881(a)(10) Brief description of cause: Civil Forfeiture Action					
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VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____					
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DATE SIGNATURE OF ATTORNEY OF RECORD 02/12/2018					
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FOR OFFICE USE ONLY					
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RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____